



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:
CEPR-P (715)

13 March 2003

MEMORANDUM FOR COMMANDERS/DIRECTORS, ALL USACE COMMANDS
(DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: PARC Instruction Letter 2003-07, EFARS Miscellaneous Changes

1. In accordance with EFARS 1.201-100, this PARC Instruction Letter (PIL) is issued to amend and revise the language in the EFARS pertaining to Parts 4, 6, 19, 25, 32, 33, and 52. The new Parts are at enclosures 1 through 7. At enclosure 8 is a matrix tracking the changed parts with comments on reason(s) for the changes.

2. Substitute the enclosed pages as follows:

Remove pages(s)	Insert page(s)
4-0 through 4-1	4-0 through 4-1
6-0 through 6-1	6-0 through 6-1
19-0 through 19-2	19-0 through 19-3
25-0 through 25-1	25-0 through 25-1
32-0 through 32-1	32-0 through 32-1
33-0 through 33-4	33-0 through 33-5
52-0 through 52-6	52-0 through 52-7

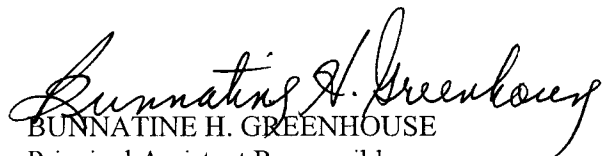
3. Please note, EFARS pages included in this PIL are changed from double to single columns, the type font is changed from Times CG ATT to Times New Roman, and page numbers are changed from alternating left and right to centered at the bottom of the page. These changes will also be made to other EFARS Parts on the PARC website. This will make the EFARS format compatible with format of the FAR, DFARS and AFARS.

4. If the subordinate command prefers to rely on a printed EFARS book (as opposed to the electronic EFARS on the PARC homepage), each substituted page is to be stamp dated on the bottom of the page with the corresponding date of this memorandum. Upon completion of the page removals, addressees are to post the PIL with the regulation. Addressees are also to ensure distribution of this PIL to all staff elements as necessary (i.e., engineering, construction, and legal offices).

5. Questions concerning this PIL should be directed to the EFARS Working Group Leader, Wayne Hardin at (202) 761-8647, Email clyde.w.hardin@usace.army.mil.

FOR THE COMMANDER:

8 Encls


BUNNATINE H. GREENHOUSE
Principal Assistant Responsible
for Contracting

PART 4 — ADMINISTRATIVE MATTERS

TABLE OF CONTENTS

SUBPART 4.8 — CONTRACT FILES

4.802 Contract files.

Enclosure 1

ENGINEER FAR SUPPLEMENT (EFARS)

PART 4 — ADMINISTRATIVE MATTERS

SUBPART 4.8 — CONTRACT FILES

4.802 Contract files.

(c) Official contract files shall be maintained by the awarding/administering/command contracting office. All actions shall be recorded on Engineer Forms 3726, 3726-1, and 3726-2, and maintained in the official contract file.

PART 6 — COMPETITION REQUIREMENTS

TABLE OF CONTENTS

SUBPART 6.3 — OTHER THAN FULL AND OPEN COMPETITION

6.303 Justifications.

6.303-91 Format of the Justification and Approval (J&A).

6.304 Approval of the justification.

SUBPART 6.5 — COMPETITION ADVOCATES

6.501 Requirement.

Enclosure 2

ENGINEER FAR SUPPLEMENT (EFARS)

PART 6 — COMPETITION REQUIREMENTS

SUBPART 6.3 — OTHER THAN FULL AND OPEN COMPETITION

6.303 Justifications.

6.303-91 Format of the Justification and Approval (J&A).

An equivalent Justification Review Document in electronic format may be used instead. The Chief of Contracting (or designee in the Chief's absence), shall sign the Justification Review Document.

6.304 Approval of the justification.

(a)(1) Proposed contracts utilizing other than full and open competition not exceeding \$500,000 will be approved by the Chief of Contracting.

(2) Division Directors of Contracting are delegated the authority to approve proposed contracts utilizing other than full and open competition exceeding \$500,000 but not exceeding \$10,000,000. The Justification Review Document and the J&A for actions over \$10,000,000 but not exceeding \$50,000,000 shall be forwarded to HQUSACE ATTN: CEPR for approval by the PARC.

(3) Proposed contracts utilizing other than full and open competition exceeding \$50,000,000 shall be forwarded to CEPR with the Justification Review Document.

(4) All justifications shall be reviewed by the Office of Counsel, and the field competition advocate.

SUBPART 6.5 — COMPETITION ADVOCATES

6.501 Requirement.

Division Directors of Contracting are appointed as Special Competition Advocates.

(S-100) Field Competition Advocates shall be appointed in writing by Commanders and be a supervisory level above the Chief of Contracting. Field Competition Advocates will perform the duties and responsibilities listed in FAR 6.502.

PART 19 — SMALL BUSINESS PROGRAMS

TABLE OF CONTENTS

SUBPART 19.2 — POLICIES

- 19.201 General policy.
- 19.201-100 USACE Small Business Council.

SUBPART 19.5 — SET-ASIDES FOR SMALL BUSINESS

SUBPART 19.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM

- 19.705 Responsibilities of the contracting officer under the subcontracting assistance program.
- 19.705-4 Reviewing the subcontracting plan.
- 19.705-6 Postaward responsibilities of the contracting officer.

SUBPART 19.8 — CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

- 19.800(b) General.
- 19.803 Selecting acquisitions for the 8(a) Program.

SUBPART 19.10 — SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

- 19.1001 General.
- 19.1003 Purpose.
- 19.1005 Applicability.
- 19.1006. Procedures.
- 19.1007 Solicitation provisions.

, SUBPART 19.70 — EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS

Enclosure 3

ENGINEER FAR SUPPLEMENT (EFARS)

PART 19 — SMALL BUSINESS PROGRAMS

SUBPART 19.2 — POLICIES

19.201 General policy.

(c)(6) The USACE Director of Small Business shall be afforded an opportunity to comment upon and contribute to the performance evaluation of Deputies for Small Business at Divisions, TAC, HNC, and HECSA. Deputies for Small Business at Divisions shall be afforded the same opportunity for the Deputies for Small Business at Districts.

(9)(B) Deputies for Small Business shall make the review and document it on DD Form 2579, Small Business Coordination Record, prior to synopsis of a requirement for A-E services in the Commerce Business Daily.

(S-91) Commanders shall forward the nominee for Deputy for Small Business, along with a summary of qualifications, to the headquarters Director of Small Business for review and consultation.

19.201-100 USACE Small Business Council.

The USACE Small Business Council is chaired by the USACE Director of Small Business. Its members are the Deputy for Small Business of the Divisions and HNC. The council shall meet at least annually at the call of the chairperson.

SUBPART 19.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

19.705-4 Reviewing the subcontracting plan.

(d) Before accepting a subcontracting plan with a small disadvantaged business goal of less than five percent, the contracting officer shall prepare an explanatory statement and include it, along with the approval request, and a copy of the evaluation cited at AFARS 5119.705-4.

SUBPART 19.8 — CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

19.800(b) General.

Architect-Engineer services may be obtained through the 8(a) Program using competitive procedures. See 36.602 (S-101).

19.803 Selecting acquisitions for the 8(a) Program.

(a) Deputies for Small Business are redelegated the authority to respond to SBA requests for commitments to support business plans of 8(a) firms in accordance with local procedures.

(c) Deputies for Small Business are redelegated the authority to identify to the SBA, after coordination and approval in accordance with local procedures, candidate projects for being accomplished by 8(a) firms. Each command shall review planned acquisitions every fiscal year to determine which acquisitions are suitable for the 8(a) program.

ENGINEER FAR SUPPLEMENT (EFARS)

PART 19 — SMALL BUSINESS PROGRAMS

SUBPART 19.10 — SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

19.1001 General.

Section 401 of Public Law 105-135 (the Small Business Reauthorization Act of 1997) permanently extends the Small Business Competitiveness Demonstration Program originally authorized in 1989 by sections 711 through 718 of Public Law 100-656.

Section 404 of Public Law 105-135 also permanently extends the program to expand small business participation in dredging also originally authorized in 1989 by section 722 of Public Law 100-656.

19.1003 Purpose.

(a) The purpose of the Section 722 is to expand the participation of small business (SB) concerns and emerging small business (ESB) concerns in contracting opportunities for dredging. The SB program goal is not less than 20% to SB, including 5% to ESB companies. The dollar value of contracts which are performed exclusively by dustpan and sea-going hopper dredges are excluded in calculating the percentage of small business attainment.

(b) Contracting opportunities for dredging shall be reserved for competition among ESB concerns if the estimated award value is below an amount specified by the Administrator for Federal Procurement Policy (Administrator), upon recommendation by the Secretary of the Army (Secretary). The reserve amount is established at the level reasonably expected to result in the Army attaining the goal for ESB.

(c) The reserve amount threshold is reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semiannual basis. The review is based on the aggregate of contract awards for the four fiscal year quarters preceding the review. Contract award data is compiled by the Navigation Data Center, Water Resources Support Center, 7701 Telegraph Road, Alexandria, VA. 22310-3868.

19.1005 Applicability.

The program applies to dredging activities under SIC 1629 (Dredging), limited to Federal Procurement Data Systems codes Y216 (new work) and Z216 (maintenance dredging).

19.1006 Procedures.

A. Reserve threshold for ESBs in the dredging industry is \$400,000.

B. All acquisitions for dredging shall be reserved for exclusive competition among ESBs when the estimated award value is below the emerging small business reserve amount, provided the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB, and award will be made at fair market price.

C. Contracting officers shall restrict for competition among all eligible small business concerns, contracting opportunities for dredging in such numbers and at such estimated award values as necessary for the contracting activity to attain the goal for small business concerns.

ENGINEER FAR SUPPLEMENT (EFARS)

PART 19 — SMALL BUSINESS PROGRAMS

D. Nothing under the Small Business Competitiveness Demonstration Program shall impair the award of dredging contracts pursuant to section 8(a) of the Small Business Act or section 1207 of the National Defense Authorization Act for Fiscal Year 1987.

E. Contracting officers shall provide information on contract awards for dredging to the POC for Navigation Data for Dredging Information System.

19.1007 Solicitation provisions.

The contracting officer shall insert in full text the provision at FAR 52-219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all dredging solicitations.

PART 25 — FOREIGN ACQUISITION

TABLE OF CONTENTS

SUBPART 25.2 — BUY AMERICAN ACT-CONSTRUCTION MATERIALS

25.202 Policy.

25.203 Evaluation of Offers

SUBPART 25.3 — BALANCE OF PAYMENTS PROGRAM

25.302 Policy.

Enclosure 4

ENGINEER FAR SUPPLEMENT (EFARS)

PART 25 — FOREIGN ACQUISITION

SUBPART 25.2 — BUY AMERICAN ACT-CONSTRUCTION MATERIALS

25.202 Policy.

(a)(1) The HCA is delegated authority to make the determination that the use of a particular domestic construction material is impracticable for use in particular contracts. This authority has been redelegated as follows:

- (i) to Chiefs of Contracting Offices if the cost of the domestic material is less than \$10,000.
- (ii) to Division Directors of Contracting if the cost of the domestic material is \$10,000 or more, but less than \$100,000.
- (iii) to the PARC or designee at HQUSACE if the cost of the domestic material is \$100,000 or more.

(2) The HCA is delegated authority to determine that a particular construction material is not reasonably available (that is, not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality). In accordance with the delegation from the ASA(ALT), this determination is not further redelegated for acquisitions estimated to exceed \$2 million.

(3) The HCA is delegated authority to make the determination that the cost for construction materials to be used in a particular contract is unreasonable. This determination may be made by the Chiefs of Contracting Offices by applying the 6 percent evaluation factor in 25.203 without regard to the cost of the domestic material.

25.203 Evaluation of Offers

DoD has determined that the cost of a particular construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent (including duty).

SUBPART 25.3 — BALANCE OF PAYMENTS PROGRAM

25.302 Policy.

(b)(ii)(a) The authority to make determinations of non-availability for procurements under \$500,000 is delegated to the following:

- (1) Commander, Pacific Ocean Division;
- (2) Commander, TransAtlantic Programs Center;
- (3) Commander, South Atlantic Division;
- (4) Commander, North Atlantic Division for Greenland;
- (5) Commanders, Far East and Japan Districts.

(b) Requests for approval of non-availability determinations for procurements exceeding the delegated threshold shall be forwarded to HQUSACE, ATTN: CEPR.

PART 32 — CONTRACT FINANCING

TABLE OF CONTENTS

SUBPART 32.1 — GENERAL

32.111 Contract clauses.

SUBPART 32.7 — CONTRACT FUNDING

32.703-2-100 Civil works contracts conditioned upon the availability of funds - continuing contracts.

32.705 Contract clauses.

32.705-100 Clauses for civil works continuing contracts.

Enclosure 5

ENGINEER FAR SUPPLEMENT (EFARS)

PART 32 — CONTRACT FINANCING

SUBPART 32.1 — GENERAL

32.111 Contract clauses.

(S-100) When the contracting officer determines that payment for materials delivered to a location other than the work site during a construction contract is in the Government's best interest, the contracting officer shall insert the statement at 52.232-5000, Payment for Material Delivered Off-Site, in solicitations and contracts.

SUBPART 32.7 — CONTRACT FUNDING

32.703-2-100 Civil works contracts conditioned upon the availability of funds - continuing contracts.

(a) 33 U.S.C. 621 authorizes the use of civil works contracts for Congressionally-mandated projects that have a portion of the contract price dependent upon reservation of funds from future appropriations. In addition, ER 1105-2-100 authorizes the use of civil works incrementally-funded contracts where contracting authority does not exist to obligate the entire contract price in advance of appropriations.

(b) For continuing contracts, contracting officers should ensure that funds are kept available for necessary superintendence up to the probable resumption of work, and for any expected end of contract clean-up.

32.705 Contract clauses.

32.705-100 Clauses for civil works continuing contracts.

(a) The clause at 52.232-5001, Continuing Contracts, shall be used in solicitations and contracts for civil works water resource projects, but only for projects that have been specifically adopted by Congress in authorizing legislation. This clause may also be used for civil works operation and maintenance (O&M) contracts for projects that have previously been specifically adopted by Congress. For projects that are under the continuing authorities described in ER 1105-2-100, use the clause described at (b) below.

(b) The clause at 52.232-5002, Continuing Contracts (Alternate), may be used in solicitations and contracts funded incrementally by civil works appropriations when no contracting authority exists to obligate the entire contract price in advance of appropriations (i.e. contracts under the continuing authorities program described in ER 1105-2-100 for construction and studies, including General Investigation Studies, advance engineering and design, and architect-engineer services).

PART 33 — PROTESTS, DISPUTES, AND APPEALS

TABLE OF CONTENTS

SUBPART 33.1 — PROTESTS

- 33.102 General.
- 33.102-100 Corps of Engineers Automated Legal System Matter Tracking System.
- 33.103 Protests to the agency.
- 33.103-90-100 Annual agency bid protest report
- 33.103-100 Disclosure of Government Estimate
- 33.104 Protests to GAO.
- 33.190-100 Reporting and analysis of bid protests.
- 33.190-101 Bid protest after action report.
- 33.190-102 Contracting officer's reports on GAO and agency protests

SUBPART 33.2 — DISPUTES AND APPEALS

- 33.203 Applicability.
- 33.203-100 Agency board of contract appeals for civil works contracts.

Enclosure 6

ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

SUBPART 33.1 — PROTESTS

33.102 General.

(a)(1) Contracting Officers retain the inherent authority to resolve protests by taking corrective action. Contracting Officers may also communicate with the protester in an attempt to convince them to withdraw.

(2) All communication to the Office of the Chief Counsel shall be addressed to HQUSACE, (Attn: CECC-C).

(b)(2) In the event an agency protest is sustained, the protester shall be advised of its right to file a claim for costs to the Contracting Officer within 60 days after receipt of the agency's decision. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs. The Contracting Officer will evaluate the claim and submit to the Chief Counsel through channels, within 30 days, a recommendation as to payment of appropriate agency protest costs.

33.102-100 Corps of Engineers Automated Legal System Matter Tracking System.

The field office attorney assigned to each agency or GAO bid protest shall ensure that the protest data is entered into the Corps of Engineers Automated Legal System-Matter Tracking System (CEALS-MTS) Procurement Bid Protest Notebook, as soon as practicable. The attorney is further responsible for promptly updating and ultimately closing the protest's MTS file, as appropriate.

33.103 Protests to the agency.

(c) Where appropriate, alternative dispute resolution procedures may be used to resolve protests, as permitted by law.

33.103(d)(3)-100 Authority.

(1)(i) The USACE agency protest process provides an independent review at a level above the Contracting Officer. Procedures for processing an agency protest are set out below. In response to each agency protest, the appropriate Contracting Officer shall submit an agency protest report, with the analysis and documentation set forth in FAR 33.104(a)(3) and EFARS 33.190-102.

(ii) The Chief Counsel is authorized to decide all agency protests with power of delegation.

(2) The Chief Counsel has delegated the authority to decide agency-level protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, Mississippi Valley Division, North Atlantic Division, Northwestern Division, South Atlantic Division, Southwestern Division, South Pacific Division, Pacific Ocean Division, Huntsville Engineering and Support Center, and the Transatlantic Programs Center. Such authority is without the power of redelegation except that Northwestern Division Counsel may redelegate to the Missouri River Region.

(3) The Chief Counsel has retained authority to decide agency level protests in the Humphreys Engineer Center Support Activity, and the Engineer Research Development Center.

(4) Divisions, Regions, and Centers with delegated authority shall furnish copies of all final agency decisions to the Office of the Chief Counsel, within five days after the decision is signed.

ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

(5) The Office of the Chief Counsel shall be advised of any protest of national significance or precedential nature. The Chief Counsel may choose to intervene in any case, to include removing the case from the general delegation. The Division, Regional, and Center Counsel have the discretionary authority to consult with the Office of the Chief Counsel in any protest as deemed necessary.

(6) In those cases in which the Chief Counsel has retained the authority to decide the agency bid protest, the District shall submit the Contracting Officer's report to the Division Counsel for review and comment. The Division Counsel then furnishes the report with comments to the Office of the Chief Counsel (attn: CECC-C) for final decision. Center Counsels shall submit the Contracting Officer's report directly to CECC-C for final decision. CECC-C requires two copies of the Contracting Officer's report be furnished.

33.103 (f) Action upon receipt of protest.

(1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of a protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the government. Such justification or determination shall be approved by the Head of the Contracting Activity on a non-delegable basis.

(3) Upon receipt of a protest within 10 days after contract award or within five days after a debriefing date offered to the protester under a timely debriefing request in accordance with FAR 15.505 or 15.506, whichever is later, the Contracting Officer shall immediately suspend performance pending resolution of the protest within the agency, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved by the Head of the Contracting Activity on a non-delegable basis.

33.103-90-100 Annual Agency Bid Protest Report.

A year-end report of all agency and GAO bid protest cases decided during the fiscal year shall be submitted to the Office of the Chief Counsel by each Division and Center Counsel. Such report should include a summary and analysis identifying the number of protests by District, types of decisions, repetitive issues, trends, and any emerging guidance or patterns of decisions. The year end report shall be submitted, no later than 15 October to:

U.S. ARMY CORPS OF ENGINEERS
ATTN: CECC-C
441 G STREET, NW
WASHINGTON, DC 20314-1000

33.103-100 Disclosure of Government Estimate

If an apparent low bidder protests the reasonableness of the Government estimate, the Command shall provide the details of the Government estimate to the protester upon receipt of complete details of the protester's estimate. The details of the Government and protester's estimates are not to be disclosed to third parties.

33.104 Protests to GAO.

33.104-100 (a) General Procedures. The Chief Counsel has the authority to determine the final agency position for GAO protests with power of delegation.

ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

(1) The Chief Counsel has delegated authority to determine the final agency position for GAO protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, North Atlantic Division, Northwestern Division, Pacific Ocean Division (for Alaska District only), South Atlantic Division, South Pacific Division, Southwestern Division, Engineer Research and Development Center, Transatlantic Program Center, and Huntsville Engineering and Support Center. Such authority includes the power for Division or Center Counsel to redelegate to the Districts and/or Region. Delegated protests shall be processed in accordance with procedures established by the respective Division or Center Counsels.

(i) Offices with delegated authority must furnish copies of all final agency positions (excluding exhibits) to the Office of the Chief Counsel, as soon as practicable after the position is signed. At the discretion of the Chief Counsel, draft copies may be requested for review prior to transmission to GAO.

(ii) Final agency positions include the agency report and agency response to protester comments, as well as any other dispositive motion submitted by the agency.

(iii) Division Counsels who have redelegated their authority should determine oversight requirements and issue policies to effect those requirements.

(2) The Chief Counsel has retained authority to determine the final agency position for GAO bid protests in the Mississippi Valley Division, Humphreys Engineer Center Support Activity and Pacific Ocean Division (for all Districts except Alaska). Counsel at such offices shall forward the Contracting Officer's report directly to the Office of the Chief Counsel within 15 days of the telephone notification, for determination of the final agency position on the protest. A copy shall be simultaneously sent to the Division Counsel for review and comment. Each Contracting Officer's report submitted shall include the analysis and documentation set forth in 33.190-100.

(3) The Office of the Chief Counsel shall be advised of any protest of national significance or precedential nature. The Chief Counsel may choose to intervene in any case, to include removing the case from the general delegation. The Division, Regional, and Center Counsel have the discretionary authority to consult with the Office of the Chief Counsel in any protest as deemed necessary.

(4) Immediately after receipt of a complete copy of the protest, counsel assigned to the case should consider whether a request for summary dismissal is appropriate. If summary dismissal of the protest or certain grounds of the protest is warranted, a request must be submitted to the GAO within three days.

(i) The written request should clearly indicate the protest number, the grounds of the protest that should be dismissed, and the reasons for dismissal. The request should also assert the Corps' intent to submit a full agency report within the normal deadline in the event the GAO declines to summarily dismiss the protest.

(ii) Counsel who have been delegated bid protest authority should contact the GAO Administrative Office by telephone to inform them that a request for summary dismissal is being prepared. Subsequently, the request and supporting documents should be faxed and mailed to the GAO attorney assigned to the case.

(iii) Counsel who have not been delegated bid protest authority should communicate to the attorney in CECC-C assigned to the protest that a summary dismissal is appropriate. Supporting documents for justification of the summary dismissal request should be faxed, or transmitted electronically as appropriate, to Office of the Chief Counsel, as needed.

ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

(5)(i) Each office of counsel responsible for responding to protests at the GAO must fax a written notice of appearance to the GAO, protester, CECC-C, and intervenor if any, not later than three days after being notified of the protest by the Office of the Chief Counsel.

(ii) The notice shall include the name, address, phone number, facsimile number, and e-mail address of the attorney who will represent USACE in the protest.

33.104 (b)(1) Protests before award. All requests to the Office of the Deputy Assistant Secretary of the Army (Procurement) (SAAL-PS) for approval to award a contract or issue a notice to proceed, notwithstanding a protest, shall be forwarded through channels to the Chief Counsel for processing and transmittal to SAAL-PS. Generally such request shall be forwarded to the Chief Counsel within three days of notice of the protest. The request shall include a complete explanation for the need to award or proceed with performance of the contract, including costs and other impacts, and the Contracting Officer's report with the analysis and documentation set forth in FAR 33.104(a)(3).

(c)(2) Protests after award. The findings for authorization of contract performance should be processed in accordance with the requirements provided at 33.104 (b)(1), Protests before award.

33.190-100 Reporting and analysis of bid protests.

33.190-101 Bid protest after action report.

The requirement for after action reporting will be satisfied by entering the required data in the CEALS-MTS Bid Protest Notebook, described in 33.102-100, as soon as practicable. GAO bid protest decisions are posted on the Internet within 24 hours after they are issued (unless subject to protective order), at: <http://www.gao.gov/decisions/bidpro/bidpro.htm>

33.190-102 Contracting officer's reports on GAO and agency protests.

(a) In addition to the documents described in FAR 33.103(d) and 33.104(a)(3), each Contracting Officer's report on an agency or GAO protest shall include:

(1) Findings of fact prepared with complete documentation and including all the facts, both favorable and unfavorable, to the Contracting Officer's position.

(2) Review by legal counsel with citation to pertinent decisions of the Comptroller General.

(b) The Contracting Officer's report shall not be released to any member of the public, including the protestor and other interested parties, without the prior approval of the office having authority to decide an agency protest or to determine the final agency position on a GAO protest.

(c) Administrative report.

(1) The administrative report prepared in response to a protest should include, at a minimum:

- (i) The Contracting Officer's signed statement of relevant facts;
- (ii) the protest itself;
- (iii) the solicitation;
- (iv) the protester's bid or proposal;

ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

- (v) the successful bid or proposal;
- (vi) an abstract of bids;
- (vii) all evaluation documents;
- (viii) any other relevant documents; and
- (ix) an index to all documents submitted.

(2) The administrative report should be assembled in a secure binder fastened at the left side with a fastener that will permit the full page to be read. The index of all documents should be placed as the first page. Each document should be separated by a divider with a tab attached. The Contracting Officer's statement should be paginated. Sizable files should be divided into two or more volumes. The cover of the report should identify it as the protest file and include the file number. Drawings should be folded and placed into an envelope in the binder. The solicitation/contract should be enclosed as a separate exhibit if it is voluminous in size.

SUBPART 33.2 — DISPUTES AND APPEALS

33.203 Applicability.

33.203-100 Agency board of contract appeals for civil works contracts.

The Armed Services Board of Contract Appeals is the agency board having jurisdiction over appeals arising from final decisions of the contracting officer on Corps of Engineers contracts. The procedures for handling contract appeals are set forth in EFARS Appendix A, Part 3 – Contract Requests, Claims, and Appeals.

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

TABLE OF CONTENTS

SUBPART 52.1 — INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101 Using Part 52.

52.102-1 Incorporation by reference.

SUBPART 52.2 — TEXTS OF PROVISIONS AND CLAUSES

52.212-5000 Evaluation of subdivided items.

52.211-5001 Variations in estimated quantities — subdivided items.

52.214-5000 Apparent clerical mistakes.

52.231-5000 Equipment ownership and operating expense schedule.

52.232-5000 Payment for materials delivered off-site.

52.232-5001 Continuing contracts.

52.232-5002 Continuing contracts (alternate).

52.236-5000 Plant and material removal after contract termination.

52.249-5000 Basis for settlement of proposals.

Enclosure 7

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 52.1 — INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101 Using Part 52.

(b)(2)(ii)(B) In accordance with AFARS policy, the sequential number for EFARS clauses will be in the 5000 series.

52.102-1 Incorporation by reference.

If solicitation provisions or contracts clauses are incorporated by reference, the reference must include the exact date of the provision or clause.

SUBPART 52.2 — TEXTS OF PROVISIONS AND CLAUSES

52.211-5000 Evaluation of subdivided items.

As prescribed at 11.703(c), insert the following provision:

EVALUATION OF SUBDIVIDED ITEMS (MAR 1995) — EFARS

Item Nos. _____ are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.

(End of provision)

52.211-5001 Variations in estimated quantities — subdivided items.

As prescribed at 11.703(c), insert the following clause in solicitations and contracts for fixed-price construction contracts when subdivided items are to be separately priced for payment purposes.

VARIATIONS IN ESTIMATED QUANTITIES — SUBDIVIDED ITEMS (MAR 1995) — EFARS

This variation in estimated quantities clause is applicable only to Items Nos. ____.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for items Nos. ____ is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.212-11, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Items Nos. ____ exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Items Nos. ____ exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

52.214-5000 Apparent clerical mistakes.

As prescribed at 14.406-2 insert the following statement in solicitation and contracts.

ARITHMETIC DISCREPANCIES

(a) For the purpose of initial evaluations of bids, the following will be utilized in the resolving arithmetic discrepancies found on the face of bidding schedule as submitted by the bidder:

- (1) Obviously misplaced decimal points will be corrected;
- (2) Discrepancy between unit price and extended price, the unit price will govern;
- (3) Apparent errors in extension of unit prices will be corrected;
- (4) Apparent errors in addition of lump-sum and extended prices will be corrected.

(b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

(c) These correction procedures shall not be used to resolve any ambiguity concerning which bid is low.

(End of statement)

52.231-5000 Equipment ownership and operating expense schedule.

As prescribed in 31.105-100, insert the following clause in all solicitations and contracts for construction that are expected to exceed the small purchase threshold.

EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995) — EFARS

(a) This clause does not apply to terminations. See 52.249-5000, Basis for settlement of proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region [*insert Roman numeral for the appropriate region of the schedule*]. Working

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

52.232-5000 Payment for materials delivered off-site.

As prescribed in 32.111(S-100), insert the following clause in solicitations and contracts for construction.

PAYMENT FOR MATERIALS DELIVERED OFF-SITE (MAR 1995) — EFARS

(a) Pursuant to FAR clause 52.232-5, Payments Under Fixed Priced Construction Contracts, materials delivered to the contractor at locations other than the site of the work may be taken into consideration in making payments if included in payment estimates and if all the conditions of the General Provisions are fulfilled. Payment for items delivered to locations other than the work site will be limited to: (1) materials required by the technical provisions; or (2) materials that have been fabricated to the point where they are identifiable to an item of work required under this contract.

(b) Such payment will be made only after receipt of paid or receipted invoices or invoices with canceled check showing title to the items in the prime contractor and including the value of material and labor incorporated into the item. In addition to petroleum products, payment for materials delivered off-site is limited to the following items: [*List items for which payments will be made for off-site delivery*]

(End of clause)

52.232-5001 Continuing contracts.

As prescribed at 32.705-100(a), insert the following clause in civil works solicitations and contracts:

CONTINUING CONTRACTS (MAR 1995) — EFARS

(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

appropriations, and from future contribution to the project having one or more non-federal project sponsors. The responsibilities of the Government are limited by this clause notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract.

(b) The sum of \$ _____ has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds together with funds provided by one or more non-federal project sponsors will be reserved for this contract.

(c) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (f) and (i) below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore.

(d) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(e) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

• (f) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(g) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract.

(h) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(i) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government.

(j) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

under the contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

(End of clause)

52.232-5002 Continuing contracts (alternate).

As prescribed at 32.705-100(b), insert the following clause in civil works solicitations and contracts:

CONTINUING CONTRACTS (ALTERNATE) (MAR 1995) — EFARS

(a) Funds are not available at the inception of this contract to cover the entire contract price. The sum of \$_____ has been reserved for this contract and is available for payment to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds, together with funds provided by one or more non-federal project sponsors will be reserved for this contract. The liability of the United States for payments beyond the funds reserved for this contract is contingent on the reservation of additional funds.

(b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (e) and (h) below.

(c) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(d) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under this contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(e) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of this contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(f) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract.

(g) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(h) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments other wise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be at no cost to the Government, except that, to the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of the Government.

(i) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under this contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

(j) The term "Reservation" means monies that have been set aside and made available for payments under this contract.

(End of clause)

52.236-5000 Plant and material removal after contract termination.

As prescribed at 36.5100, insert the following clause in solicitations and contracts for civil works "continuing contracts" that also provide for payment of mobilization and preparatory work.

PLANT AND MATERIAL REMOVAL AFTER CONTRACT TERMINATION (MAR 1995) — EFARS

Should this contract be terminated as provided in clause 52.232-5001 because of the failure of Congress to provide additional funds for its completion, the contractor may be permitted to remove plant and material on which payments for preparatory work have been made, subject to an equitable deduction from the amounts due the contractor to reimburse the United States for the unabsorbed value of such plant and material.

(End of clause)

52.249-5000 Basis for settlement of proposals.

As prescribed at 49.113(100) insert the following statement in solicitations and contracts.

BASIS FOR SETTLEMENT OF PROPOSALS

"Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates , those charges will be adjusted to actual costs.

ENGINEER FAR SUPPLEMENT(EFARS)

PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate."

(End of Statement)

EFARS WORKING GROUP (EWG)
ACTIONS ON EFARS – VARIOUS PARTS

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 4.70 — UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS</p> <p>4.7003 Basic Procurement Instrument Identification Number.</p> <p>(a) Elements of number.</p> <p>(4) For procurements processed using the Standard Army Automated Contracting System (SAACONS), the single set of serial numbers generated by SAACONS shall be used. For actions not processed by SAACONS, a single set of serial numbers may be used for solicitations, contracts, and purchase orders, in lieu of a separate series for each instrument.</p>	<p>Part 4: Delete Subpart 4.70 and paragraph 4.7003 concerning SAACONS and contract numbering.</p>	<p>This provision is obsolete since SPS is now used instead of SAACONS.</p>
<p>SUBPART 6.3 – OTHER THAN FULL AND OPEN COMPETITION</p> <p>6.304 Approval of the justification.</p> <p>(a)(2) Proposed contracts utilizing other than full and open competition exceeding \$500,000 but not exceeding \$10,000,000 shall be approved by Division Directors of Contracting who have been appointed by name as Special Competition Advocates by the ASA(RDA) . The Justification Review Document and the J&A for actions over \$10,000,000 but not exceeding \$50,000,000 shall be forwarded to HQUSACE ATTN: CEPR for approval by the PARC.</p>	<p>(a)(2) Division Directors of Contracting are delegated the authority to approve proposed contracts utilizing other than full and open competition exceeding \$500,000 but not exceeding \$10,000,000. The Justification Review Document and the J&A for actions over \$10,000,000 but not exceeding \$50,000,000 shall be forwarded to HQUSACE ATTN: CEPR for approval by the PARC.</p>	<p>6.304(a)(2) now indicates that the Division Directors of Contracting have to be appointed by name as Special Competition Advocates (SCA) by ASA(RDA). However, AFARS 5106.501 now says the HCA can appoint SCAs at procuring activities. Hence, the first sentence of 6.304(a)(2) must be revised to remove the reference to appointment by ASA(RDA).</p>

Enclosure 8

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 6.5 — COMPETITION ADVOCATES</p> <p>6.501 Requirement.</p> <p>The Special Competition Advocates are located in each Division Contracting Directorate and designated in accordance with the FAR. The PARC will review the qualifications of Division Directors of Contracting and provide recommendations to the ASA(RDA) for the appointment of Special Competition Advocates.</p>	<p>Division Directors of Contracting are appointed as Special Competition Advocates.</p>	<p>See rationale for 6.304(a)(2).</p>
<p>SUBPART 19.2 - POLICIES</p> <p>19.201 General policy.</p> <p>(c)(6) The USACE Director of Small Business shall be afforded an opportunity to comment upon and contribute to the performance evaluation of Deputies for Small Business at Divisions, CERL, CRRL, TEC, WES, and HECSA. Deputies for Small Business at Divisions shall be afforded the same opportunity for the Deputies for Small Business at Districts.</p>	<p>19.201 General policy.</p> <p>(c)(6) The USACE Director of Small Business shall be afforded an opportunity to comment upon and contribute to the performance evaluation of Deputies for Small Business at Divisions, TAC, HNC, and HECSA. Deputies for Small Business at Divisions shall be afforded the same opportunity for the Deputies for Small Business at Districts.</p>	<p>Reflect current USACE organization.</p>
<p>19.201-100 USACE Small Business Council.</p> <p>The USACE Small Business Council is chaired by the USACE Director of Small Business. Its members are the Deputy for Small Business of the Divisions, Laboratories, and HECSA. The council shall meet at least annually at the call of the chairperson.</p>	<p>19.201-100 USACE Small Business Council.</p> <p>The USACE Small Business Council is chaired by the USACE Director of Small Business. Its members are the Deputy for Small Business of the Divisions and HNC. The council shall meet at least annually at the call of the chairperson.</p>	<p>Reflect current USACE organization.</p>
<p>SUBPART 19.7 — SUBCONTRACTING WITH SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS</p>	<p>SUBPART 19.7 — THE SMALL BUSINESS SUBCONTRACTING PROGRAM</p>	<p>Revise title to conform to FAR.</p>

Current EFARS	Proposed EFARS	Reason/Comments
19.705-4 Reviewing the subcontracting plan. (d) Before accepting a subcontracting plan with a small disadvantaged business goal of less than five percent, the contracting officer shall prepare an explanatory statement and include it, along with the explanatory statement and include it, along with the approval request, and a copy of the evaluation cited at AFARS 19.705-4 (S-90).	19.705-4 Reviewing the subcontracting plan. (d) Before accepting a subcontracting plan with a small disadvantaged business goal of less than five percent, the contracting officer shall prepare an explanatory statement and include it, along with the approval request, and a copy of the evaluation cited at AFARS 5119.705-4.	Simplify language and update AFARS citation.
SUBPART 19.8 – CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM) 19.800(b) General. Architect-Engineer services may be obtained through the 8(a) Program using either sole-source or competitive procedures. The firms will be evaluated by USACE in accordance with the procedures in FAR 36.602.	19.800(b) General. Architect-Engineer services may be obtained through the 8(a) Program using competitive procedures. See 36.602 (S-101).	Change to reflect recent SBA ruling that sole source 8(a) A-E contracts are not legal. Cross reference to the new EFARS 36.602 (S-101) on the A-E selection process for 8(a) and HUBZone programs.
SUBPART 19.10 – SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM 19.1001 General. Section 401 of Public Law 105-135 (the Small Business Reauthorization Act of 1997) permanently extends the Small Business Competitiveness Demonstration Program originally authorized in 1989 by sections 711 through 718 of Public Law 00-656.	19.1001 General. Section 401 of Public Law 105-135 (the Small Business Reauthorization Act of 1997) permanently extends the Small Business Competitiveness Demonstration Program originally authorized in 1989 by sections 711 through 718 of Public Law 100-656.	Correct THE Public Law number.

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 25.2 – BUY-AMERICAN ACT – CONSTRUCTION MATERIALS</p> <p>25.202 Policy.</p> <p>(S-100) The HCA is delegated authority to make the determination regarding exceptions to the Buy American Act for construction contracts for use in particular contracts when:</p> <p>(a) the cost is unreasonable;</p> <p>(b) the use is impracticable;</p> <p>(c) the material is not reasonably available (that is not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality).</p> <p>(S-101) The authority to make the determination is re-delegated as follows:</p> <p>(a) The determination that the cost is unreasonable can be made by the Chiefs of Contracting Offices by applying the 6 percent factor in (b), without regard to the cost of the domestic material.</p> <p>(b) The determination that the use is impracticable may be made by:</p> <p>(1) Chiefs of Contracting Offices if the cost of the domestic material is less than \$10,000.</p> <p>(2) Division Directors of Contracting if the cost of the domestic material is \$10,000 or more but not less than \$100,000.</p> <p>(3) The PARC or designee at HQUSACE if the cost of the domestic material is \$100,000 or more.</p> <p>(c) In accordance with the delegation from SARDA, the determination that a material is not reasonably available is not further redelegated.</p>	<p>25.202 Exceptions.</p> <p>(a)(1) The HCA is delegated authority to make the determination that the use of a particular domestic construction material is impracticable for use in particular contracts. This authority has been redelegated as follows:</p> <p>(i) to Chiefs of Contracting Offices if the cost of the domestic material is less than \$10,000.</p> <p>(ii) to Division Directors of Contracting if the cost of the domestic material is \$10,000 or more, but less than \$100,000.</p> <p>(iii) to the PARC or designee at HQUSACE if the cost of the domestic material is \$100,000 or more.</p> <p>(2) The HCA is delegated authority to determine that a particular construction material is not reasonably available (that is not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality). In accordance with the delegation from the ASA(ALT), this determination is not further redelegated for acquisitions estimated to exceed \$2 million.</p> <p>(3) The HCA is delegated authority to make the determination that the cost for construction materials to be used in a particular contract is unreasonable. This determination may be made by the Chiefs of Contracting Offices by applying the 6 percent evaluation factor in 25.203 without regard to the cost of the domestic material.</p>	<p>The proposed revision is needed to clarify the title and number of EFARS 25.202 so that the text is in line with higher tier regulations. The proposed revision is primarily one of structure, not substance. The only substantive change is to add a phrase at the end of the new 25.202(a)(2), to clarify that, pursuant to AFARS 25.202, DFARS 225.202 and DFARS 25.103, HCA determinations regarding nonavailability of certain construction materials for acquisitions exceeding \$2 million may not be redelegated. However, for acquisitions below \$2 million this determination authority can be redelegated in accordance with DFARS 225.202. This clarification is made in response to a specific inquiry from the South Atlantic Division Office of Contracting.</p>

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 32.7 – CONTRACT FUNDING</p> <p>32.705-100 Clauses for civil works continuing contracts.</p> <p>(a) The clause at 52.232-5001, Continuing Contracts, shall be used in solicitations and contracts for civil works construction and supply (including dredging, maintenance, and new construction), but only for projects that have been specifically adopted by Congress in authorizing legislation. This clause may also be used for civil works operation and maintenance (O&M) contracts for projects that have previously been specifically adopted by Congress. Do not use this clause for projects that are under the continuing authorities described in ER 1105-2-100.</p> <p>(b) The clause at 52.232-5002, Continuing Contracts (Alternate), may be used in solicitations and contracts funded by civil works appropriations as follows:</p> <p>(i) incrementally-funded contracts when no contracting authority exists to obligate the entire contract price in advance of appropriations;</p> <p>(ii) multi-year contracts under the continuing authorities program described in ER 1105-2-100 for construction and for studies (including General Investigation Studies, advance engineering and design, architect-engineer services, and other studies).</p>	<p>32.705-100 Clauses for civil works continuing contracts.</p> <p>(a) The clause at 52.232-5001, Continuing Contracts, shall be used in solicitations and contracts for civil works water resource projects, but only for projects that have been specifically adopted by Congress in authorizing legislation. This clause may also be used for civil works operation and maintenance (O&M) contracts for projects that have previously been specifically adopted by Congress. For projects that are under the continuing authorities described in ER 1105-2-100, use the clause described at (b) below.</p> <p>(b) The clause at 52.232-5002, Continuing Contracts (Alternate), may be used in solicitations and contracts funded incrementally by civil works appropriations when no contracting authority exists to obligate the entire contract price in advance of appropriations (i.e. contracts under the continuing authorities program described in ER 1105-2-100 for construction and studies, including General Investigation Studies, advance engineering and design, and architect-engineer services).</p>	<p>This revision is needed to implement a Chief Counsel opinion regarding the proper interpretation of the Rivers and Harbors Act, 33 U.S.C. 621, subsequent to passage of WRDA 1999. The opinion states that the River Harbors Act is properly read to grant authority to use continuing contract authority for civil works water resource projects, without limiting the type of work under those projects to dredging, maintenance, and new construction. Under this interpretation it is appropriate to use the continuing contracts clause for architect-engineer contracts. The revision further clarifies that separate continuing contract authority exists for projects that are not specifically adopted by Congress, but are incrementally funded under the continuing authorities described in ER 1105-2-100. Contracts and solicitations for such contracts shall include the Alternate Continuing Contracts clause. The revisions to the section regarding the Alternate Continuing Contracts clause are made solely to clarify that all the listed contracts can be incrementally funded.</p>

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 33.1 - PROTESTS</p> <p>33.103 Protests to the agency.</p> <p>33.103(d)(3)-100 Authority. ***</p> <p>(2) The Chief Counsel has delegated the authority to decide agency-level protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, Mississippi Valley Division, North Atlantic Division, Northwestern Division, South Atlantic Division, Southwestern Division, South Pacific Division, Pacific Ocean Division (only for Korea, Alaska, and Japan District procurements), Huntsville Engineering and Support Center, and the Transatlantic Programs Center. Such authority is without the power of redelegation except that Northwestern Division Counsel may redelegate to the Missouri River Region.</p> <p>(3) The Chief Counsel has retained authority to decide agency level protests in the Pacific Ocean Division (only for Honolulu District procurements), Humphreys Engineer Center Support Activity, and the Engineer Research Development Center.</p>	<p>(2) The Chief Counsel has delegated the authority to decide agency-level protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, Mississippi Valley Division, North Atlantic Division, Northwestern Division, South Atlantic Division, Southwestern Division, South Pacific Division, Pacific Ocean Division, Huntsville Engineering and Support Center, and the Transatlantic Programs Center. Such authority is without the power of redelegation except that Northwestern Division Counsel may redelegate to the Missouri River Region.</p> <p>(3) The Chief Counsel has retained authority to decide agency level protests in the Humphreys Engineer Center Support Activity, and the Engineer Research Development Center.</p>	<p>Rationale for all Part 33 Changes:</p> <p>These changes are needed to reflect additional delegations of authority made by the Chief Counsel regarding bid protest decision authority since the last time EFARS Part 33 was updated. The update also reflects the new address for HQUSACE. The deletion of EFARS 33.203-100 became necessary as of July 30, 2000 when the Engineer Board was merged into the Armed Services Board of Contract Appeals (ASBCA), and the ASBCA took jurisdiction over contract appeals involving both civil works and military contracts. The new language proposed for EFARS 33.203-100 clarifies the present status of the ASBCA and refers readers to Appendix A, which is already in place.</p>
<p>33.103-90-100 Annual Agency Bid Protest Report.</p> <p>.... The year end report shall be submitted, no later than 15 October to:</p> <p>U.S. ARMY CORPS OF ENGINEERS, ATTN: CECC-C 20 MASSACHUSETTS AVENUE, NW WASHINGTON, DC 20314-1000</p>	<p>.... The year end report shall be submitted, no later than 15 October to:</p> <p>U.S. ARMY CORPS OF ENGINEERS, ATTN: CECC-C 441 G STREET, NW WASHINGTON, DC 20314-1000</p>	

Current EFARS	Proposed EFARS	Reason/Comments
<p>33.104 Protests to GAO.</p> <p>33.104-100 (a) General Procedures. ***</p> <p>(1) The Chief Counsel has delegated authority to determine the final agency position for GAO protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, North Atlantic Division, Northwestern Division, South Atlantic Division, South Pacific Division, Southwestern Division, Engineer Research and Development Center, Transatlantic Program Center, and Huntsville Engineering and Support Center. Such authority includes the power for Division or Center Counsel to redelegate to the Districts and/or Region. Delegated protests shall be processed in accordance with procedures established by the respective Division or Center Counsels. ***</p> <p>(2) The Chief Counsel has retained authority to determine the final agency position for GAO bid protests in the Mississippi Valley Division, Humphreys Engineer Center Support Activity and Pacific Ocean Division. Counsel at such offices shall forward the Contracting Officer's report directly to the Office of the Chief Counsel within 15 days of the telephone notification, for determination of the final agency position on the protest. A copy shall be simultaneously sent to the Division Counsel for review and comment. Each Contracting Officer's report submitted shall include the analysis and documentation set forth in 33.190-100.</p>	<p>(1) The Chief Counsel has delegated authority to determine the final agency position for GAO protests to the following Division or Center Counsels: Great Lakes and Ohio River Division, North Atlantic Division, Northwestern Division, Pacific Ocean Division (for Alaska District only), South Atlantic Division, South Pacific Division, Southwestern Division, Engineer Research and Development Center, Transatlantic Program Center, and Huntsville Engineering and Support Center. Such authority includes the power for Division or Center Counsel to redelegate to the Districts and/or Region. Delegated protests shall be processed in accordance with procedures established by the respective Division or Center Counsels. ***</p> <p>(2) The Chief Counsel has retained authority to determine the final agency position for GAO bid protests in the Mississippi Valley Division, Humphreys Engineer Center Support Activity and Pacific Ocean Division (for all Districts except Alaska). Counsel at such offices shall forward the Contracting Officer's report directly to the Office of the Chief Counsel within 15 days of the telephone notification, for determination of the final agency position on the protest. A copy shall be simultaneously sent to the Division Counsel for review and comment. Each Contracting Officer's report submitted shall include the analysis and documentation set forth in 33.190-100.</p>	

Current EFARS	Proposed EFARS	Reason/Comments
<p>SUBPART 33.2 – DISPUTES AND APPEALS</p> <p>33.203-100 Agency board of contract appeals for civil works contracts.</p> <p>For civil works contracts only, the Corps of Engineering Board of Contract Appeals, Pulaski Building, 20 Massachusetts Ave., NW, Washington, DC 20314, is the agency board having jurisdiction over claims and appeals arising from final decisions of the contracting officer. The Armed Services Board of Contract Appeals shall have jurisdiction over non-civil works contracts.</p>	<p>The Armed Services Board of Contract Appeals is the agency board having jurisdiction over appeals arising from final decisions of the contracting officer on Corps of Engineers contracts. The procedures for handling contract appeals are set forth in EFARS Appendix A, Part 3 – Contract Requests, Claims, and Appeals.</p>	
<p>SUBPART 52.2 - TEXTS OF PROVISIONS AND CLAUSES</p> <p>52.212-5001 Variations in estimated quantities — subdivided items.</p>	<p>52.211-5001 Variations in estimated quantities — subdivided items.</p>	<p>Clause 52.212-5001 is misnumbered. It should be 52.211-5001.</p>